

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6,540,928

Application Number: 09/658,023

Issue Date: 04-01-2003

Filing Date: 09-08-2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable:**

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_,  
original filing date \_\_\_\_\_.

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_.

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input checked="" type="checkbox"/> \$ 3600.00	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ \_\_\_\_\_

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 50-3945

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 50-3945

OR

☐ Send refund check


**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

  
Signature(s) of Petitioner(s)

04-04-2013

Date

Russell Westerman

Typed or printed name(s)

Registration Number, if applicable

Plasma-Therm, LLC

727-577-4999

Address

Telephone Number

10050 16th Street North, St. Petersburg, Florida 33716

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)

☐ Other:

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

Harvey S. Kauget  
Type or printed name

04-04-2013  
Date

41,108  
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Attached is the Declaration of Russell Westerman in Support of this Petition.

*(Please attach additional sheets if additional space is needed)*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PATENT NUMBER: 6,540,928  
APPLICATION NUMBER: 09/658,023  
FILING DATE: 09-08-2000  
ISSUE DATE: 04-01-2003  
TITLE: Magnetic Pole Fabrication Process and Device

**DECLARATION OF RUSSELL WESTERMAN IN SUPPORT OF PETITION TO  
ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN  
AN EXPIRED PATENT**

I am Russell Westerman and I hereby declare that:

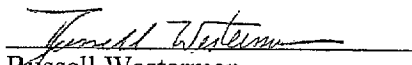
1. I am currently the Executive VP of Technology of the Assignee (Plasma-Therm, LLC) of the subject patent (U.S. Patent 6,540,928). My residence, post office address and citizenship is as stated below next to my name.
2. The subject patent (U.S. Patent 6,540,928) was assigned to Plasma-Therm, LLC from Oerlikon USA, Inc. on about January 26, 2009, as recorded under real/Frame: 022203/0740.
3. I was the person responsible for managing the Intellectual Property portfolio for Oerlikon USA, Inc. when the subject patent (U.S. Patent 6,540,928) was owned by Oerlikon USA, Inc. until the time that Plasma-Therm, LLC was formed on or about February 2009.

4. I was responsible for docketing the maintenance fees for several U.S. Patents, Foreign Patents and Foreign Patent Applications, including the subject patent (U.S. Patent 6,540,928) for Oerlikon USA, Inc.
5. The first maintenance fee for the subject patent (U.S. Patent 6,540,928) was due on or about October 2006, which was duly paid on September 28, 2006, on behalf of Oerlikon USA, Inc.
6. As the Executive VP of Technology of Plasma-Therm, LLC, I am responsible for docketing the maintenance fees for several U.S. Patents, Foreign Patents and Foreign Patent Applications, including the subject patent (U.S. Patent 6,540,928).
7. On or about December 2009, Plasma-Therm, LLC hired CPA Global to handle the payment of all maintenance fees for its patent portfolio, including the subject patent (U.S. Patent 6,540,928).
8. During the transfer of maintenance fee data to CPA Global, the maintenance fee data for the subject patent (U.S. Patent 6,540,928) was inadvertently not recognized and/or acquired by CPA Global. Thus, the subject patent (U.S. Patent 6,540,928) was not docketed for the payment of the second maintenance fee.
9. No notification for failure to pay the second maintenance fee due on or about October 2010, was received by Plasma-Therm, LLC. And, to my knowledge, no notification was received by Oerlikon USA, Inc.
10. At the end of March 2013, Plasma-Therm, LLC was informed by TD Bank that there were discrepancies in the assignment ownership of a couple of patents owned by Plasma-Therm, LLC.

11. As a result of the inquiry by TD Bank, on or about April 2, 2013, I asked the Patent Attorney for Plasma-Therm, LLC to perform a due diligence as to ownership of our patent portfolio. During this review, it was discovered that the second maintenance fee for the subject patent (U.S. Patent 6,540,928) had not been paid during the payment window for the second maintenance fee. Specifically, the second maintenance fee had not been timely paid due to the mis-docketing of the maintenance fee data for the subject patent (U.S. Patent 6,540,928) during the transfer of maintenance fee data to CPA Global in or about December 2009.

12. On or about April 3, 2013, I instructed the Patent Attorney for Plasma-Therm, LLC to prepare the necessary paperwork and to pay the second maintenance fee and any other fees for the subject patent (U.S. Patent 6,540,928) that had not been timely paid due to a mis-docketing of the maintenance fee data for the subject patent (U.S. Patent 6,540,928).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Russell Westerman  
Citizenship: United States  
3610 Swans Landing Drive  
Land O' Lakes, FL 34639